

REMARKS

This response accompanies a Request for Continued Examination.

Applicant thanks the Examiner for the courtesy extended in granting an interview on March 9, 2005.

Claims 1-41 were pending. No amendments of the claims have been made. Accordingly, claims 1-41 remain pending.

Priority Claim

Applicant acknowledges the Examiner's finding that the claim for priority is valid and proper, based on the filing of a certified copy of the priority documents in the parent application of the instant application, and based on the timely assertion of a claim for priority.

Rejections Under 35 U.S.C. § 102

1. Applicant acknowledges the withdrawal by the Examiner in the Advisory Action of February 23, 2005 of the rejection of claims 1-41 under 35 U.S.C. § 102(a) as being anticipated by Timmons et al. (Nature 395:854, October 1998).
2. The Examiner maintained the rejection of claims 1-41 under 35 U.S.C. 102(e) as anticipated by the Fire patent (US 6,506,559 B1). Applicant respectfully traverses the rejection.

The Examiner asserted that the filing date of the Fire provisional application (US 60/068,562, filed December 23, 1997), serves as the 102(e) date for the Fire patent. Therefore, the Examiner concludes that the Fire patent has an earlier effective filing date than the instant application.

Applicant respectfully disagrees and requests reconsideration on the basis that the disclosure of the Fire provisional application is insufficient as a matter of law under 35 U.S.C. § 112, first paragraph, to serve as the 102(e) date with respect to the subject matter claimed by Applicant.

As discussed in the interview of March 9, 2005, the Fire provisional application does not describe feeding of micro-organisms for delivery of vectors or dsRNA, which is a limitation of independent claims 1, 2, 13 and 14. Claim 30 recites particular micro-organisms that express dsRNA. The Examiner indicated that it was unexpected that the feeding of such micro-organisms would be effective, and acknowledged that Applicant had demonstrated that feeding such micro-organisms is effective.

Therefore, the Fire provisional application contains no disclosure of the limitation of feeding in claims 1, 2, 13 and 14, or of the micro-organism of claim 30. Because all pending claims depend from one or more of these claims, the Fire provisional application is deficient in disclosing one or more limitations of each of the presently pending claims, and thus does not support that aspect of the Fire patent as asserted against Applicant's claims.

Because the Fire provisional application does not disclose the invention now claimed by Applicant (as is alleged for the Fire patent), the Fire patent should not have the benefit of the Fire provisional application filing date with respect to establishing a prior 102(e) date to serve as an anticipatory reference against the instantly claimed invention.

In view of the foregoing arguments regarding the inadequacy of the Fire patent as a 102(e) reference inasmuch as it depends on the Fire provisional application for an earlier effective filing date, withdrawal of the rejection of the claims under 35 U.S.C. § 102(e) is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,
Plaetinck, et al, Applicant

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Docket No. D0590.70011US00
Dated: June 17, 2005
X06/23/05